

Exhibit B

LARRY GLASSER, ADA
DiPPO vs PUTNAM

August 16, 2019

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ANTHONY DiPIPPPO,

Plaintiff,

-against-

Case No.:
17-CV-7948-NSR-JCM

COUNTY OF PUTNAM, ET. AL.,

Defendants.

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DEPOSITION OF ADA LARRY GLASSER, a
non-party witness herein, taken by the Plaintiff,
pursuant to Subpoena, held at the offices of
Portale Randazzo, LLP, 245 Main Street, Suite 340,
White Plains, New York 0601, on Friday, August 16,
2019, at 9:50 o'clock a.m., before Deborah
Moschitto, a Shorthand Reporter and Notary Public
of the State of New York.

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2 Q. Okay. Now, what did Denise Rose
3 tell you, tell me to the best of your ability
4 what Denise Rose told you that satisfied your
5 concerns about her testimony regarding the
6 gun?

7 A. Well, it wasn't just what she
8 told me, but what she did tell me --

9 Q. Let's start with what she told
10 you.

11 A. Okay. I'm not quoting her, but
12 what she told me, in effect, was that there
13 was no gun, and she said it during the
14 deposition out of frustration and, again, to
15 enhance the likelihood that Anthony DiPippo
16 did not recover any money in this lawsuit
17 which she thought was an outrage.

18 Q. So she told you that she said
19 there was a gun at the deposition knowing
20 that there was no gun in order to enhance the
21 possibility that Anthony DiPippo would lose
22 the case and not recover money; correct, in
23 substance?

24 A. In substance, yes. And that she
25 was very upset with the attorneys -- attorney

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2 Q. But the other times you
3 interviewed Denise, you were interviewing her
4 as a witness in connection with a
5 prosecution; right?

6 A. Yes.

7 Q. And here, as you've told me, you
8 were investigating a troubling admission she
9 made under oath at her deposition which
10 suggested she was not telling the truth;
11 correct?

12 A. Well --

13 Q. Here's what I'm getting at: She
14 admitted to you that she intentionally lied
15 under oath about an important issue, at her
16 deposition. That's not like every other
17 statement she reported during your meetings
18 with her. Where did you write it down?

19 MR. RANDAZZO: Objection.

20 A. I just said I don't know. If I
21 wrote it down it would have been on a file on
22 my computer.

23 Q. But you're not sure whether you
24 wrote it down?

25 A. I had an investigator with me and

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2 we may have decided that he would be the one
3 to document the meeting and take notes.

4 Q. So you don't remember, as you sit
5 here today, when Denise Rose said to you:

6 Yes -- I understand she didn't use the word
7 "perjury," but when she said: Yes, I
8 intentionally lied under oath about Anthony
9 DiPippo having a gun to make it less likely
10 that he would win his lawsuit and get money,
11 you're telling me you don't remember whether
12 you wrote that down or whether your
13 investigator wrote that down?

14 A. Correct.

15 MR. RANDAZZO: Objection.

16 Q. And this was approximately six
17 months ago, the key witness in a case you're
18 prosecuting is admitting to perjury and
19 you're not sure today, as you sit here,
20 whether you wrote it down or an investigator
21 wrote it down; correct?

22 MR. RANDAZZO: Objection.

23 A. Well, at the time I'm not sure of
24 the status. You say it was a case I was
25 prosecuting. I already said I don't know

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2 which one of us wrote it down.

3 Q. Is it possible neither of you
4 wrote it down?

5 A. I can't think so.

6 Q. Okay. Because that's a -- you're
7 an experienced prosecutor, that's a criminal
8 admission by Denise Rose; you understand
9 that, right?

10 MR. RANDAZZO: Objection.

11 A. Yes.

12 Q. And so when Denise Rose made that
13 admission to you, tell me every step you took
14 after she made that admission to you to deal
15 with the fact -- to address this criminal
16 admission by the key witness in your case.

17 MR. RANDAZZO: Objection.

18 A. I don't understand what you mean
19 by addressing the fact. I discussed it with
20 her, how and why she said what she said. My
21 investigator was with me and we discussed it
22 with her. And for what it's worth, shortly
23 thereafter, I don't know if this is what
24 you're getting at, at the first court
25 appearance we had after Andy Krivak was given

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2 whether the claims made in the defendants'
3 written 440 Motion warranted a new trial.
4 There was a Brady claim. There was a coerced
5 confession claim. There was the Joe Santoro
6 newly discovered evidence claim. They were
7 entitled, the 2nd Department ruled, to an
8 evidentiary hearing on the claims in their
9 motion papers.

10 Q. You understood the judge was
11 going to be sitting there hearing evidence
12 and deciding whether to grant Andy Krivak a
13 new trial; correct?

14 A. Yes.

15 Q. You understood that was going to
16 happen; as of February 7th, you knew that
17 that was going to happen?

18 A. Yes.

19 Q. Okay. And yet you knew that Andy
20 Krivak's lawyers, Andy Krivak had very --
21 has -- withdrawn.

22 You knew Andy Krivak's lawyers
23 had already asked to expand the hearing to
24 include allegations of perjury made by Denise
25 Rose, as you've already told me; right?

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2 A. Yes.

3 Q. So you knew that if they had --
4 if they knew that Denise Rose had made a
5 criminal admission to you that she had, in
6 fact, committed perjury, they would have
7 tried to use that in any way they could;
8 right?

9 MR. RANDAZZO: Objection.

10 Q. You knew that they would have
11 tried?

12 MR. RANDAZZO: Objection.

13 A. I don't know that.

14 Q. No?

15 A. There is a lot of information
16 they had that I thought they would use at the
17 440 Hearing and they didn't.

18 Q. Sir, sir, listen to me, listen to
19 my questions, remember that you're under
20 oath.

21 A. Yes.

22 Q. You knew they had already tried
23 to expand the scope of the hearing to include
24 allegations of perjury by Denise Rose, okay;
25 they were cognisant of that issue clearly

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2 based on their request; right?

3 A. Yes.

4 Q. Okay. You don't think, had they
5 known that Denise Rose had actually admitted
6 committing perjury to you they would have
7 tried to use that during the 440 proceedings?

8 MR. RANDAZZO: Objection. Asked
9 and answered six times, at least. You can
10 answer one more time. I ask you to move on
11 after that.

12 A. I think it was made clear to them
13 it would be improper to use in the 440
14 proceeding. Whether they pursued it
15 separately, I would think a zealous advocate
16 would have done so, but I don't know what
17 Adele Bernhard would have done.

18 Q. Are you suggesting Adele Bernhard
19 was not zealous enough to use the admission
20 to perjury by Denise Rose during the 440
21 proceedings even though she had already asked
22 the court to expand the hearing to include
23 it?

24 MR. RANDAZZO: Objection.

25 A. I'm not going to comment on

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2 Adele's advocacy, but I think it's both
3 procedurally and substantively improper in
4 the 440 context. I think I've said that many
5 times.

6 Q. You didn't disclose it because
7 you didn't want the judge to know that Denise
8 Rose had lied and committed perjury; right?

9 MR. RANDAZZO: Objection.

10 A. That's not true. I thought that
11 was the assumption that everybody was making.
12 Obviously these two accounts are mutually
13 incompatible so it is very clear that she
14 testified untruthfully under oath at least
15 once. I think that's understood by
16 everybody, unless she fell and hit her head
17 and it affected her memory of what occurred
18 in 1994, there is no other explanation.

19 MS. FREUDENBERGER: All right,
20 let's take a quick break.

21 (Recess taken.)

22 MS. FREUDENBERGER: Back on the
23 record.

24 Q. When Denise Rose admitted to you
25 that she had committed perjury at her

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2 MR. RANDAZZO: Objection.

3 A. Yes.

4 Q. Even though she made a
5 criminality admission to committing perjury
6 about this case to you directly?

7 MR. RANDAZZO: Objection.

8 A. I think I already answered.

9 Q. Okay. Now, once -- by the way,
10 why don't you think you have an obligation to
11 report that crime?

12 A. I don't know why you think I do.

13 Q. Well, you're not allowed to cover
14 up crimes.

15 A. I did not cover up a crime.

16 MR. RANDAZZO: Objection.

17 Q. Well, by hearing an admission to
18 a crime and not disclosing it or referring it
19 to any law enforcement agency, you are, by
20 definition, assisting in the coverup of a
21 crime.

22 MR. RANDAZZO: Objection.

23 Q. Do you understand that?

24 MR. RANDAZZO: Objection.

25 A. I disagree with that strongly.

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2 Q. Let's go back to the -- well,
3 before we do: You did report her admission
4 to District Attorney Tendy, though; correct?

5 A. We had discussed my trip to
6 Florida.

7 Q. Well, when you discussed your
8 trip to Florida, did you tell District
9 Attorney Tendy that Denise Rose had admitted
10 to intentionally lying about what she saw in
11 the van that night, to you?

12 A. As I said before, I think that is
13 privileged deliberative process and work
14 product, me discussing with other attorneys
15 in my office that situation.

16 Q. All right. After Denise Rose
17 admitted to you that she had intentionally
18 lied about the gun testimony, I take it you
19 questioned her about all of the other
20 inconsistencies in her deposition testimony;
21 correct?

22 MR. RANDAZZO: Objection.

23 A. I don't know what you mean by all
24 of her other inconsistencies, but we talked
25 about her deposition testimony, her trial

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2 of the Federal crime. I would assume it
3 doesn't.

4 Q. Okay. And as you've already told
5 me, you never reported that crime to anyone
6 at any law enforcement agencies?

7 MR. RANDAZZO: Objection. Asked
8 and answered. You can answer.

9 A. Not in Florida, no.

10 Q. And not to any Federal law
11 enforcement agencies; right?

12 A. Correct.

13 Q. And tell me why you didn't think
14 you had to.

15 MR. RANDAZZO: Objection. You
16 can answer.

17 A. Because I didn't -- I didn't
18 think I had to, and I think, as I said
19 before, her explanation was actually the
20 least exculpatory explanation she could have
21 had. I mean it would have been a bigger
22 issue if she had said that the deposition
23 testimony was true and all of her trial
24 testimony throughout the years against
25 Anthony DiPippo and Andrew Krivak was false,

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2 and it would have been a bigger exculpatory
3 issue if she told me that today, in 2019, she
4 truly did believe or remember that a gun was
5 used because that would called her competency
6 into question.

7 So having --

8 Q. That's a bigger issue than her
9 intentionally lying under oath?

10 A. As far as the defendants'
11 innocence, yes, or guilt, yes.

12 Q. What did you do to investigate
13 whether or not you had an obligation to
14 report her crime to any law enforcement
15 agencies?

16 A. I don't know that you can say
17 that I investigated it.

18 Q. You did not; right?

19 A. No, I did not.

20 Q. As a prosecutor, are you allowed
21 to dismiss, just not pursue it when someone
22 has committed a crime, admits they're
23 committing a crime, that they had a good
24 reason for it?

25 MR. RANDAZZO: Objection.

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2 A. Okay.

3 Q. Clearly, one of the arguments
4 that Ms. Bernhard is backing here, that Andy
5 Krivak's lawyer is making hear, that Denise
6 Rose has serious credibility issues; correct?
7 Do you agree with that?

8 A. I agree she made that argument.

9 Q. Right. And you were in court and
10 you heard that argument; right?

11 A. Yes.

12 Q. And then the court gave you an
13 opportunity to respond, which you did on the
14 next page?

15 A. Yes.

16 Q. Okay. And you say in response
17 that, "Andy Krivak's lawyer's allegations
18 about Denise Rose would be slanderous if not
19 made in court, that she continues to be
20 arrested and accrue a criminal record, and
21 the allegations, included allegations about
22 Denise Rose's credibility; correct?" Those
23 are some of the allegations you're responding
24 to when you cite slander, were you not in
25 court; correct?

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2 A. I was responding to her saying as
3 a reference someone who continues to get
4 arrested and develop a criminal record.

5 Q. So when you said her allegations
6 were slanderous you were only referring to
7 the criminal record part of that, you weren't
8 referring to the credibility accusation; is
9 that what you're saying?

10 A. Correct, that is what definitely
11 peaks my -- caught my attention, and that I
12 was directly responding to, and, as you see,
13 as to the rest of it, I said, second of all,
14 right after that, that there's no evidence of
15 that presented at the hearing.

16 Q. Sir, I have the transcript in
17 front of me, I can read what you said.

18 By the way, you understood when
19 you made these comments that Denise Rose had
20 gotten arrested in 2015 for resisting arrest
21 and allegation -- the allegations against her
22 were assault while she was drunk, including
23 allegations that she had pushed a cop; right?

24 A. I knew those were the
25 allegations. They came out at Anthony

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2 record, tell me the substance -- well, I'm
3 going to ask some questions now. The judge
4 directed me to ask the questions that I'd
5 like to mark for a ruling as to privilege at
6 the deposition so I'm going to do that right
7 now.

8 Q. Okay?

9 A. Okay.

10 Q. Tell me everybody whom you
11 discussed Denise Rose's admission that she
12 had intentionally lied under oath at her
13 deposition with after it happened.

14 MR. RANDAZZO: Objection, to the
15 extent it calls for or involves the
16 attorney-client privilege or deliberative
17 process or your work product. Other than
18 that, you can answer.

19 MS. FREUDENBERGER: Jim, you can
20 say privilege and we will have an
21 understanding that that encompasses all of
22 the privileges that either you or Mr. Glasser
23 has asserted. That's fine.

24 MR. RANDAZZO: All right, thanks.

25 A. I don't believe I discussed it

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2 with anybody other than to whom those
3 privileges would apply.

4 Q. Who are those individuals?

5 MR. RANDAZZO: The names of the
6 people?

7 MS. FREUDENBERGER: Yeah.

8 MR. RANDAZZO: I think that would
9 still be part of the privilege, the names of
10 the people, so we are going to invoke
11 privilege, as well.

12 MS. FREUDENBERGER: Okay.

13 Q. Describe the substance of those
14 communications.

15 MR. RANDAZZO: Objection,
16 privileged.

17 Q. Was District Attorney Tendy
18 involved in your decision not to disclose the
19 fact of Denise Rose's admission that she lied
20 under oath at her deposition intentionally?

21 MR. RANDAZZO: Objection?

22 Q. To the Krivak defense or to us in
23 the civil case?

24 MR. RANDAZZO: Objection,
25 privileged.

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2 had lied about other things in her
3 deposition?

4 A. She could have.

5 Q. Were you concerned about that?
6 I'll withdraw it.

7 Did you take any steps to find
8 out whether she had lied about anything else
9 in her deposition?

10 A. Well, the first thing I know I
11 did, although I don't remember the
12 substantive answers as I sit here, is I went
13 through the deposition and I would have sort
14 of mentally flagged anything that was
15 inconsistent with what she said before.

16 Q. Mentally flagged. Did you take
17 notes when you were reviewing her deposition?

18 A. I think I may have used Post-It
19 flags to pages that caught my attention for
20 one reason or another.

21 Q. And it would have been very easy
22 for you, when you sat down with Denise Rose,
23 to go through your Post-Its or flags and ask
24 her about the inconsistencies you had noted;
25 right?

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2 why she did it.

3 Q. So it was understandable perjury?

4 MR. RANDAZZO: Objection.

5 A. I'm not excusing it, but you
6 asked me to explain what I meant by that.

7 If she had told me when I saw her
8 in person that the account with a gun was
9 true, then that means instead of testifying
10 untruthfully in one deposition, she would
11 have testified untruthfully in multiple
12 criminal proceedings that did, in fact,
13 directly lead to convictions, and, in fact,
14 which Andrew Krivak was incarcerated for.

15 If she had told me his trial
16 testimony was perjured, that would have been
17 a much more serious issue than her telling me
18 her testimony in a collateral proceeding was
19 intentionally untrue.

20 I want to be clear, I'm not
21 excusing either one of them, but between
22 those two, this was clearly the lesser of two
23 evils, so to speak. And, as I said before,
24 if she had somehow said to me now that her
25 honest recollection was that there was a gun,

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2 there was going to be a new trial, I would
3 spend much more time with her.

4 Q. So after you asked her about the
5 gun lie, you just stopped?

6 A. No, that's not what I said.

7 Q. You stopped asking her about lies
8 in her deposition?

9 MR. RANDAZZO: Objection.

10 A. I don't remember if I asked her
11 about any other specific incidents in her
12 deposition.

13 Q. I'm not talking about specific
14 incidents. I'm talking about lies under
15 oath.

16 A. I don't think I asked her about
17 any other specific lies that I noticed in her
18 deposition. I might have. I don't remember.

19 Q. Why not?

20 MR. RANDAZZO: Objection.

21 A. Because what I was focusing on is
22 on her actually being a witness to the
23 incidents and her reports to the police.

24 And the reason she told me she
25 lied about the gun, that explanation, I took

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2 weren't credible under oath at her deposition
3 and you chose not to ask her about them?

4 MR. RANDAZZO: Objection.

5 Q. Right?

6 MR. RANDAZZO: Objection.

7 A. I don't recall if I asked her
8 about them. Some of these reasons she had
9 said before, either to me or at trial.

10 Q. Mr. Glasser, just talk about you.
11 It was six months ago and you are 43 years
12 old and you don't have any memory problems,
13 do you?

14 A. No.

15 Q. If you had talked with Denise
16 Rose about -- is it possible you talked to
17 Denise Rose about this inconsistency and you
18 just forgot about it?

19 A. As I sit here today, I don't
20 remember everything we talked about. We
21 spoke for a few hours that day. I don't
22 remember every topic of the deposition we
23 talked about. I don't believe we talked
24 about this, but I'm not a hundred percent
25 certain.

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2 Q. Did you review your notes before
3 coming here --

4 A. No.

5 Q. -- of your interview with Denise
6 Rose?

7 A. No.

8 Q. No. Why not?

9 A. I didn't think I should.

10 Q. Why?

11 A. I didn't know what you were going
12 to ask me about. I didn't -- I just didn't.

13 Q. You thought I might not ask about
14 a question that called for you to tell me
15 about that admission from Denise Rose and you
16 were worried that if you reviewed your notes
17 and I asked you what you reviewed and you
18 told me you reviewed your notes, I would ask
19 you what's in them?

20 A. That's absolutely untrue because
21 I assume any notes that were taken -- no,
22 that's just not true.

23 Q. That's just not true?

24 A. No.

25 Q. You didn't intentionally not

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2 review your notes because you were hoping you
3 wouldn't have to tell me about the admission
4 to perjury you elicited from Denise Rose?

5 MR. RANDAZZO: Objection.

6 A. I wasn't hoping anything other
7 than we would have finished a long time ago.

8 No, I didn't think you were going
9 to ask me about things that occurred three
10 years after your client's acquittal, to be
11 honest.

12 Q. All right.

13 So you didn't expect to have to
14 testify to Denise Rose's perjury admission to
15 you; right?

16 A. Correct.

17 Q. You did not think that would come
18 up today; correct?

19 A. Correct.

20 Q. You talked earlier about
21 reorganizing the file?

22 A. Yes.

23 Q. And some of the things in the
24 files are e-mails from you, correct; e-mails
25 from you to witnesses, et cetera, and when

